

## § 640.101

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AUTHORITY: 23 U.S.C. 101(e), 117, and 315; 49 CFR 1.48(b).

SOURCE: 60 FR 47483, Sept. 13, 1995, unless otherwise noted.

### § 640.101 Purpose.

The purpose of this part is to provide instructions for preparation and acceptance of State certification proposals to accomplish the policies and objectives of title 23, U.S.C., using State laws, regulations, directives, and standards. Also covered are procedures for administering projects under certification acceptance and evaluating State performance.

### § 640.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

*Certification acceptance (CA)* means the alternative procedure authorized by 23 U.S.C. 117(a) for administering Federal-aid highway projects not on the Interstate System.

*State certification* means a written statement prepared by a State highway/transportation agency setting forth the laws, regulations, directives, and standards it will use, or cause to be used, in the administration of certain highway projects.

*State highway/transportation agency* has the same meaning as that given for *State highway department* in 23 U.S.C. 101.

### § 640.105 Effect of certification acceptance.

(a) Acceptance of a State certification permits a State to discharge certain responsibilities otherwise assigned to the Secretary under title 23, U.S.C., for Federal-aid highway projects. A State may permit performance and project certification by capable local governments.

(b) Acceptance of a State certification does not constitute a commitment or obligation of Federal funds.

(c) Acceptance of a State certification does not preclude FHWA access

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to and review of a Federal-aid project at any time.

(d) Certification acceptance as an alternative procedure does not replace the fundamental provisions of law in title 23, U.S.C., with respect to the basic structure of the Federal-aid highway program. Acceptance of a CA proposal does not preclude application of any provision of title 23, U.S.C., that may be advantageous to the State.

(e) Nothing in this part shall affect or discharge any responsibility or obligation of the FHWA under any Federal law other than title 23, U.S.C.

### § 640.107 Coverage.

(a) Certification acceptance may apply to Federal-aid highway projects except projects on the Interstate System. If other FHWA regulations and title 23, U.S.C., allow, projects not on a Federal-aid highway may be administered under the provisions of an accepted State certification.

(b) The CA procedure shall not apply to transportation planning and research (23 U.S.C. 134, 135, and 307), highway safety (chapter 4, title 23, U.S.C.), or those public transportation projects not administered by FHWA under title 23, U.S.C.

(c) A State certification may provide for either full or partial coverage of the Federal-aid highway projects, programs, phases of work, and classes of projects.

### § 640.109 Requirements for certification acceptance.

(a) Acceptance of either a full or partial coverage State certification as described in § 640.107(c) will be based upon:

(1) A State request and identification of the State laws, regulations, directives, and standards that either separately or collectively will accomplish the policies and objectives contained in or issued pursuant to title 23, U.S.C., and

(2) An FHWA finding that the State highway/transportation agency has the capability to carry out project responsibilities in accordance with such State requirements. The FHWA finding will be based on previous process reviews and evaluations conducted as part of

FHWA's oversight of Federal-aid programs and an FHWA evaluation of the State's performance and resources. If information from process reviews and that available from previous evaluations are considered to be insufficient to form a reasonable judgment, they may be supplemented by additional reviews and inquiries of the State agency.

(b) A State certification may be accepted in whole or in part, depending on FHWA findings. Where minor deficiencies are found, acceptance may be conditioned or may exclude the affected State operations until the deficiencies are corrected. Where deficiencies are found which are of such magnitude as to create doubt that the policies and objectives of title 23, U.S.C., would be accomplished, the State certification will not be accepted until the deficiencies are corrected.

**§ 640.111 Content of State certification.**

(a) The State certification will include the following:

(1) The name of the State highway/transportation agency and the legal authority which permits such agency to accomplish the policies and objectives contained in or issued pursuant to title 23, U.S.C.;

(2) A statement of the programs, phases of work, and classes of projects or combinations thereof that the State is including in the certification being submitted for acceptance;

(3) For submissions providing full or partial coverage of projects as provided in § 640.107(c), a listing of the title 23, U.S.C., policies and objectives and citation of State laws, regulations, directives, and standards that will be applied. Any policies and objectives that are not applicable due to partial coverage may be omitted; and

(4) A description of the State's methods for assuring local government knowledge of and compliance with State and Federal requirements where they will perform services on projects administered under CA.

(b) Existing assurances and formal agreements between the State and the FHWA with respect to equal employment opportunity, current billing, and control of outdoor advertising will con-

tinue in full force and effect and may be incorporated by reference. Likewise, the State's procedures accepted under 23 U.S.C. 109(h) may be incorporated by reference.

(c) State certifications are to be signed by the chief official of the State highway/transportation agency and submitted to the FHWA Division Administrator.

**§ 640.113 Procedures.**

(a) Authorization by the FHWA to proceed with work on a CA project will be in response to a written request from the State highway/transportation agency.

(b) If the State finds that exceptions to CA procedures or standards are appropriate on a project, the State will justify and document such decisions.

(c) A project agreement, or modification to a project agreement, will be executed as required by 23 CFR Part 630, subpart C, Project Agreements.

(d) The FHWA may accept projects based on inspections of a type and frequency necessary to ensure the projects are completed in accordance with appropriate standards. The State is to notify the FHWA when a project is complete and/or ready for such inspection and will certify that the plans, design, and construction for the project were in accord with the laws, regulations, directives, and standards contained in the State certification or such project exceptions as were approved by the State.

(e) Revisions or amendments to State certifications will be made when necessary and processed as provided in § 640.111(c). The existing State certification is to be reviewed periodically to determine its adequacy in light of this part, the statutes in effect at the time of the review, and the operational reviews made by FHWA.

[60 FR 47483, Sept. 13, 1995, as amended at 61 FR 57331, Nov. 6, 1996]

**§ 640.115 Evaluations.**

(a) The FHWA may conduct periodic evaluations, as deemed appropriate, of the State's operations under CA. These evaluations may include coverage of any or all areas of the State's administration of CA projects.